

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
)
Request for Limited Modification of) WC Docket No. 06-2
LATA Boundaries to Provide ELCS)
Between the Pine Hill Exchange)
and the Nacogdoches Exchange)

MEMORANDUM OPINION AND ORDER

Adopted: March 15, 2006

Released: March 15, 2006

By the Chief, Competition Policy Division:

I. INTRODUCTION

1. On December 23, 2005, AT&T, Inc., on behalf of Southwestern Bell Telephone, L.P. d/b/a SBC Texas (AT&T), pursuant to section 3(25) of the Communications Act of 1934, as amended (the Act),¹ filed a petition (AT&T Petition) to provide two-way, non-optional, flat-rated expanded local calling service (ELCS) between certain exchanges in Texas.² The AT&T Petition requests a limited modification of LATA boundaries to provide ELCS between AT&T's Nacogdoches exchange located in the Houston LATA and Eastex Telephone Cooperative, Inc.'s (Eastex) Pine Hill exchange located in the Longview LATA, as approved by the Public Utility Commission of Texas (Texas Commission).³ We grant AT&T's petition for the reasons stated below.

¹ 47 U.S.C. § 153(25). Section 3(25) of the Act defines a Local Access Transport Area (LATA) as a contiguous geographic area: (1) established prior to enactment of the 1996 Act by a Bell Operating Company (BOC) such that no exchange area includes points within more than one metropolitan statistical area, consolidated metropolitan statistical area, or state, except as expressly permitted under the AT&T Consent Decree; or (2) established or modified by a BOC after such date of enactment and approved by the Commission. *Id.*

² Petition of AT&T Inc. for Modification of a LATA Boundary in Texas, WC Docket No. 06-2 (filed December 23, 2005) (AT&T Petition). SBC Communications Inc. (SBC) has previously filed requests for modification of LATA boundaries on behalf of its incumbent local exchange carrier affiliates. As AT&T explains in its petition (at 1), SBC recently acquired AT&T Corporation and SBC changed its name to AT&T Inc. As a result, AT&T Inc. has filed this LATA modification request on behalf of its incumbent local exchange carrier affiliate. *See Pleading Cycle Established for Comments on AT&T's Request for Limited Modification of the LATA Boundary to Provide Expanded Local Calling Service Between Certain Exchanges in the State of Texas*, WC Docket No. 06-2, Public Notice, DA No. 06-26 (rel. January 5, 2006). We note that both of the exchanges are in Texas. ELCS allows local telephone service rates to apply to nearby telephone exchanges, thus providing customers an expanded local calling area.

³ *See* AT&T Petition at Attachment A; Public Utility Commission of Texas, *Petition for Expanded Local Calling Service from the Pine Hill Exchange to the Exchange of Nacogdoches*, Docket No. 31428, Interim Order (rel. November 16, 2005) (Texas Order).

II. BACKGROUND

2. Requests for new ELCS routes are generally initiated by local subscribers.⁴ Although intraLATA ELCS routes can be ordered by a state commission,⁵ pursuant to section 3(25)(B) of the Act, requests for interLATA ELCS routes fall within the Federal Communications Commission's (Commission) exclusive jurisdiction.⁶ Applying a two-part test, the Commission will grant a request for a LATA boundary modification where: (1) the applicant proves that the requested LATA modification would provide a significant public benefit; and (2) granting the petition would not remove the BOC's incentive to receive authority to provide in-region, interLATA service pursuant to section 271.⁷ AT&T's petition proposes to establish two-way, non-optional ELCS, and is accompanied by an order issued by the Texas Commission approving the ELCS request.⁸ No party filed comments opposing the AT&T Petition.

III. DISCUSSION

3. We conclude that AT&T's petition satisfies the Commission's two-part test. Applying the first prong of the test, we find that AT&T has shown that a significant public benefit would result from the ELCS because a sufficient community of interest exists among the affected exchanges to justify their being treated as a local calling area.⁹ In reaching this finding, we note that AT&T proposes to offer traditional, two-way, non-optional ELCS,¹⁰ which is a type of service that this Commission has determined to be consistent with the public interest.¹¹ The AT&T Petition also demonstrates a community of interest between the affected exchanges based on polling results,¹² in addition to the community of interest findings from the Texas Commission.¹³ We agree with the Texas Commission that the petition is based on a significant community of interest, and thus satisfies the first prong of the Commission's two-part test.

4. AT&T also satisfies the second prong of the two-part test because it has already opened its market to competition in Texas and, accordingly, has been granted authority under section 271 to offer

⁴ The Texas Order was issued in response to a petition filed by subscribers of Eastex's Pine Hill exchange. See AT&T Petition, Attachment A at 1.

⁵ *United States v. Western Electric Company, Inc.*, 569 F. Supp. 990, 995 (D.D.C. 1983). "The distance at which a local call becomes a long distance toll call has been, and will continue to be, determined exclusively by the various state regulatory bodies."

⁶ *Application for Review and Petition for Reconsideration or Clarification of Declaratory Ruling Regarding U S WEST Petitions to Consolidate LATAs in Minnesota and Arizona*, Memorandum Opinion and Order, 14 FCC Rcd 14392, 14399 (1999).

⁷ See *SBC Telecom, Inc. Petition for Modification of Certain LATA Boundaries in Ohio*, Memorandum Opinion and Order, 18 FCC Rcd 26398 (2003), paras. 2, 6-8.

⁸ AT&T Petition at 1-2; Texas Order at 3.

⁹ See *Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, Memorandum Opinion and Order, 12 FCC Rcd 10646, 10653 (1997) (*July 1997 LATA Order*).

¹⁰ AT&T Petition at 1-2.

¹¹ See *July 1997 LATA Order*, 12 FCC Rcd at 10654 - 55.

¹² AT&T Petition at 2. Of the total number of Pine Hill exchange customers that responded to customer polls, 85.80% voted in favor of ELCS to the Nacogdoches exchange.

¹³ Texas Order at 2. The Nacogdoches exchange serves as a business center for Pine Hill. Nacogdoches is used as a trade center for home garden, agri-business, machinery and other purposes. Additionally, medical facilities used by Pine Hill residents are located in Nacogdoches, and many Pine Hill residents are referred to medical specialists located in Nacogdoches. *Id.*

interLATA service in that state.¹⁴ Thus, granting the requested modification has no bearing on AT&T's incentive to receive such authority. Moreover, we conclude that the LATA boundary modification would have a minimal effect on competition because modification of the LATA boundary would affect only a small number of access lines.¹⁵ As a result, we believe that granting AT&T's petition serves the public interest by permitting a minor LATA modification where such a modification is necessary to meet the needs of local subscribers. Accordingly, we approve AT&T's petition for a limited LATA boundary modification.

5. We grant this relief solely for the limited purpose of allowing AT&T to provide ELCS between the specific exchanges or geographic areas identified in this request. The LATA boundary is not modified to permit AT&T to offer any other type of service, including calls that originate or terminate outside the specified areas. Thus, two-way, non-optional ELCS between the specified exchanges will be treated as intraLATA service.

IV. ORDERING CLAUSE

6. Accordingly, IT IS ORDERED, pursuant to sections 3(25) and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 153(25), 154(i), and authority delegated by sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the request of AT&T Inc., on behalf of Southwestern Bell Telephone, L.P. d/b/a SBC Texas, for a LATA boundary modification for the limited purpose of providing two-way, traditional, non-optional ELCS at specific locations in Texas, as identified in WC Docket No. 06-2, IS APPROVED.

FEDERAL COMMUNICATIONS COMMISSION



Renee C. Crittendon
Chief, Competition Policy Division
Wireline Competition Bureau

¹⁴ *Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, 15 FCC Rcd 18354 (2000) (*SWBT Texas Order*).

¹⁵ For the purposes of ELCS petitions, we generally consider the number of access lines from customers in the smaller exchange who seek to reach businesses and services in the other exchange. This smaller exchange usually generates the majority of calls between the two exchanges. See *Southwestern Bell Petitions for Limited Modifications of LATA Boundaries to Provide Expanded Local Calling Service (ELCS)*, Memorandum Opinion and Order, 17 FCC Rcd 25540 (2002). Accordingly, for the purposes of reviewing the requested modification, and based on the Texas Commission's community of interest statement, we consider Eastex's 708 access lines in the Pine Hill exchange, a number that is well within Commission precedent. See *AT&T Petition at 2*; see also *Bell Atlantic - Virginia, Inc. Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Services (ELCS) at Various Locations*, Memorandum Opinion and Order, 13 FCC Rcd 11042, 11046 (April 1998 *LATA Order*) (granting an ELCS petition affecting over 30,000 access lines). We note that there are 26,166 lines in the Nacogdoches exchange.